



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF : CMAB/CR/7/22/45
本函檔號 OUR REF : LS/B/26/10-11
電話 TELEPHONE : 3919 3502

傳真 FACSIMILE : 2901 1297
電郵 E-MAIL : acheung@legco.gov.hk

By Post & Fax

11 November 2011

Mr TAM Chi Yuen, Raymond, JP
Secretary for Constitutional and Mainland Affairs
Constitutional and Mainland Affairs Bureau
3rd floor
Main and East Wing
Central Government Offices
HONG KONG
(Fax No.: 2840 1528)

Dear Mr TAM,

Personal Data (Privacy) (Amendment) Bill 2011

With reference to the captioned bill now being studied by a Bills Committee, it is noted that the proposed section 63D in clause 34 of the Bill (Transfer of records to Government Records Service (GRS)) exempts personal data contained in records of historical, research, educational or cultural interest that are transferred to the Government Records Service from Data Protection Principle (DPP) 3.

Paragraph 3.33.2 of the Report on Public Consultation on Review of the Personal Data (Privacy) Ordinance of October 2010 states that -

"To preserve Hong Kong's documentary heritage, it is necessary for Government bureaux and departments to transfer records of historical value, including those containing personal data, to the GRS for archival purpose. Transfer of such records has to comply with the requirements of DPP 3. Given the volume and variety of personal data in the records, it is not practicable to obtain the

prescribed consent of each and every data subject before transferring the records to the GRS and some of the data subject may not be traceable due to lapse of time."

The Report goes on, in paragraph 3.33.3, to state that -

"This proposal aims to provide the necessary exemption from DPP 3 for the transfer of records containing personal data to GRS for archival purpose. Subsequent handling of the archival records containing personal data by GRS (including access to and use of records by members of public) will continue to be subject to the provisions of the PDPO."

Whilst the majority of public records of historical value containing personal data is doubtlessly transferred to GRS by Government bureaux and departments to preserve Hong Kong's documentary heritage, there must also be a significant amount of such records being transferred to their own record-keeping service or archives for preservation by, if my understanding is correct, such independent regulatory or quasi-autonomous non-governmental organisations as the Securities and Futures Commission, Equal Opportunities Commission or Office of the Privacy Commissioner for Personal Data, let alone the Legislative Council Commission, which has recently set up the LegCo Archives within the Legislative Council Secretariat.

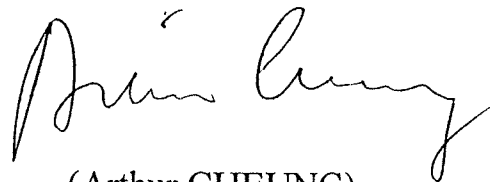
To assist the Bills Committee to examine that particular clause, I would be grateful if the Administration would provide the following clarification -

- (a) as presumably much of these public records have been transferred to GRS since the commencement of the principal ordinance, could the Administration confirm whether the transfer has been in breach of DPP 3 and whether the proposed exemption if enacted could have the effect of exempting any past breaches and if not, should the exemption be extended to them;
- (b) since the proposed exemption apparently only exempts transfer but not disclosure, how it is proposed could the exemption be implemented to ensure that the transfer would

not involve disclosure, bearing in mind that DPP 3 concerns the use of personal data and "use" is defined in the principal ordinance as including "disclose" and "transfer";

- (c) despite the exemption (if enacted), would the Administration, its bureaux and departments, in future inform the data subjects before collecting data from them that their data may be transferred for the purpose of preservation of documents of historical, research, educational or cultural interest in accordance with DPP 1;
- (d) has the Administration considered whether public bodies whose public records containing personal data are to be so preserved have the same or a similar need for the exemption proposed to be granted to GRS to facilitate the transfer of such records to their record-keepers and whether such bodies have been identified and individually consulted on such a need; and
- (e) would the Administration clarify whether or confirm that transfer of these records to their record-keepers (whether the record-keepers are within the same body or not, provided that they are different from the persons within that same body who deal with the personal data in those records for the purpose for which the data is collected) would be caught by DPP 3 without the exemption as proposed?

Yours sincerely,



(Arthur CHEUNG)

Senior Assistant Legal Adviser

c.c. Clerk to Bills Committee